

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OLUSHOLA R. JETAWO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE, BRIAN L.
NIX, and UNITED STATES OF AMERICA,

Defendants.

Civil Action No.
CV-20- 3740

(_____, J.)
(_____, M.J.)

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that the above-captioned action, pending in the Civil Court of the City of New York, County of Kings has been removed to the United States District Court for the Eastern District of New York.

SETH D. DuCHARME, Acting United States Attorney for the Eastern District of New York, EKTA R. DHARIA, Assistant United States Attorney, of counsel, respectfully states the following facts upon information and belief:

1. The above-captioned action was commenced in the Civil Court of the City of New York, County of Kings with Index Number CV-008709-19/KI, and named as defendants UNITED STATES POSTAL SERVICE and BRIAN L. NIX. *See* Summons and Complaint filed March 27, 2019 and Notice of Inquest dated January 27, 2020, annexed hereto as Exhibit A.

2. This is a tort action in which the plaintiff alleges \$5,334.60 in property damage from a motor-vehicle accident on December 13, 2018, against defendants UNITED STATES POSTAL SERVICE and BRIAN L. NIX. *See* Exhibit A.

3. At the time of the tort alleged in the Summons and Complaint that was filed on March 27, 2019, defendant BRIAN L. NIX was an employee of the UNITED STATES

POSTAL SERVICE (“USPS”), an agency of the federal executive department of the UNITED STATES OF AMERICA, and was acting within the course and scope of his employment as a deemed employee of the UNITED STATES POSTAL SERVICE. *See* Certification of Scope of Employment and Notice of Substitution of the United States of America by Assistant U.S. Attorney EKTA R. DHARIA, dated August 17, 2020, attached hereto as Exhibit B.

4. Pursuant to 28 U.S.C. § 2679(d)(2), and the above-referenced certification, which provides that defendant BRIAN L. NIX was acting within the course and scope of his federal employment at the time of the incident out of which the claim arose, the claim asserted against BRIAN L. NIX is deemed to be a claim brought against the UNITED STATES OF AMERICA. Pursuant to the Certification attached at Exhibit B, the UNITED STATES OF AMERICA is, by operation of law, substituted as the sole party defendant for BRIAN L. NIX and the UNITED STATES POSTAL SERVICE.

5. Because this action relates to an alleged “act” of an “officer ... of the United States,” this action may be removed pursuant to 28 U.S.C. § 1442(a)(1), without waiver of any and all arguments that the United States of America, including any of its agencies and/or employees or officers, may have regarding the District Court’s subject matter jurisdiction over the substantive claims asserted in this action.

6. In accordance with 28 U.S.C. § 1446(a), a copy of the Summons and Complaint is attached as Exhibit A.

7. Pursuant to 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2), this action may be removed to this Court because the Complaint asserts claims against the UNITED STATES OF AMERICA and purports to raise matters under federal law.

8. A proposed Order regarding a modification of the caption is attached hereto as

Exhibit C.

9. Pursuant to 28 U.S.C. §§ 2408 and 2679(d)(2), the UNITED STATES OF AMERICA may remove this action without a bond.

WHEREFORE, it is respectfully requested that the above-captioned action pending in the Civil Court of the City of New York, County of Kings be removed to this Court; and

In accordance with 28 U.S.C. § 1446(d), the filing of a copy of this notice with the Clerk of the Court, Civil Court of the State of New York, County of Kings shall effect the removal, and the state court shall proceed no further with respect to the action, unless and until the case is remanded thereto.

Dated: August 17, 2020
Brooklyn, New York

Respectfully submitted,

SETH D. DuCHARME
Acting United States Attorney
Eastern District of New York
Attorney for Defendant United States of America
271-A Cadman Plaza East
Brooklyn, New York 11201

By: /s/ Ekta R. Dharia
EKTA R. DHARIA
Assistant United States Attorney
(718) 254-7520
ekta.dharia@usdoj.gov

To: **By E-Mail**
Clerk of the Court
Civil Court of the City of New York
County of Kings
141 Livingston Street
Brooklyn, New York 11201
kingscivil141@nycourts.gov

cc: **By E-Mail**

Mr. Rory Mulholland

Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP

1 Metrotech Center, Suite 1701

Brooklyn, New York 11201

rmulholland@abramslaw.com

Attorneys for Plaintiff

EXHIBIT A

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS**

OLUSHOLA R. JETAWO

Plaintiff(s)

-against-

UNITED STATES POSTAL SERVICE
BRIAN L. NIX

Defendant(s)

INDEX NO.

SUMMONS

Basis for Venue

Plaintiff Transacts Business in Kings County

TO THE ABOVE NAMED DEFENDANT(S)

YOU ARE HEREBY SUMMONED TO APPEAR IN THE CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF KINGS, AT THE OFFICE OF SAID COURT AT 141 LIVINGSTON STREET, BROOKLYN, NY, IN THE COUNTY OF KINGS, CITY AND STATE OF NEW YORK, WITHIN THE TIME PROVIDED BY LAW AS NOTED BELOW AND TO FILE YOUR ANSWER TO THIS SUMMONS AND ENDORSED COMPLAINT WITH THE CLERK. UPON YOUR FAILURE TO ANSWER, JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE SUM OF \$5,334.60 WITH INTEREST THEREON FROM December 13, 2018 TOGETHER WITH THE COSTS OF THIS ACTION.

DATED: March 12, 2019

BROOKLYN, NY

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN,
FORMATO, FERRARA, WOLF & CARONE, LLP

Attorney for Plaintiff(s)

1 METROTECH CENTER, SUITE 1701

BROOKLYN, NY 11201

(718)-215-5300

Plaintiff (s) Address:

OLUSHOLA R. JETAWO
173-55 104th AVENUE
QUEENS, NY 11433

Defendant(s) Address:

UNITED STATES POSTAL SERVICE, 225 CADMAN PLAZA EAST, BROOKLYN, NY 11201
BRIAN L. NIX, 67 CADY STREET, ROCHESTER, NY 14608

FILED
CLERKS OFFICE
MAR 27 2019
CIVIL COURT
KINGS COUNTY

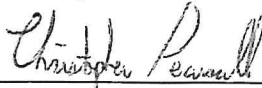
Note: The law provides that (a) this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the clerk of this Court within which to appear and answer.

ENDORSED COMPLAINT

A STATEMENT OF THE NATURE AND SUBSTANCE OF THE PLAINTIFF'S CAUSE OF ACTION AS FOLLOWS: THIS IS AN ACTION FOR PROPERTY DAMAGE AND LOSS OF USE IN THE SUM OF \$5,334.60 WITH INTEREST FROM THE DATE OF THE ACCIDENT. THE ACCIDENT RESULTED FROM THE NEGLIGENT OPERATION OF THE DEFENDANT'S MOTOR VEHICLE BEARING REGISTRATION NUMBER: 6617131 STATE OF NY, ON OR ABOUT December 13, 2018, AT OR NEAR THE INTERSECTION FLATLANDS AVENUE AND WILLIAMS AVENUE, BROOKLYN, NY AND WITHOUT ANY CONTRIBUTORY NEGLIGENCE ON THE PART OF THE PLAINTIFF. PLAINTIFF'S PLATE NUMBER: T765718C.

The undersigned hereby affirms that the within papers contain assertions supported by reasonable efforts made to ascertain the underlying merits of the pleading and that same have been found by the undersigned, an attorney admitted to practice law in the State of New York, to be meritorious, non-frivolous, and submitted in good faith furtherance of the interests of the undersigned attorney's client.

SIGNED: ABRAMS FENSTERMAN, L.L.P.



CHRISTOPHER PEARSALL, Esq.

Y221

L.A.

NOTICE OF INQUEST

AGAINST

UNITED STATES POSTAL SERVICE and BRIAN L. NIX

For use of Clerk

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

INDEX NO. 008709/19

Calendar No.

- ☒ This Case was never Noticed for Trial Before
- ☐ Trial by jury demanded
- ☐ Of all issues
- ☐ Of issues specified below or attached here

OLUSHOLA R. JETAWO

Plaintiff(s)

-against-

UNITED STATES POSTAL SERVICE
BRIAN L. NIX

Defendant(s)

Filed by attorney for Plaintiff

Date summons served: 5/6/2019

Date service completed: 5/22/2019

Date issue joined:

NATURE OF ACTION OR SPECIAL PROCEEDING

- ☒ Tort: ☒ Motor vehicle negligence
- ☐ Other (tort) specify

Contract: Breach of Contract

Other (not itemized above) specify.....

This action is brought as a class action

Amount demanded \$5,334.60 Plus interest from December 13, 2018

Other relief.....

Counterclaim.....

Insurance Carrier(s) if known:

Preference claimed under.....

On the ground that.....

CERTIFICATE OF READINESS FOR INQUEST

Items 1-5 must be checked

1. All pleadings served.....
2. Bill of particulars served.....
3. Physical examinations completed.....
4. Medical reports exchanged.....
5. Discovery proceedings now known to be necessary completed.....
6. There are no outstanding requests for discovery.
7. There has been a reasonable opportunity to complete the foregoing proceedings.
8. The case is ready for trial.

Dated: January 24, 2020

ABRAMS, FENSTERMAN, ET-AL

Attorney(s) for Plaintiff(s)

1 Metro Tech Center - Suite 1701

Brooklyn, New York 11201

Phone No: (718) 215-5300

Completed

Waived

Not required



Signature - Christopher Pearsall, Esq.

Non-Appearing Defendant(s):

United States Postal Service: 225 Cadman Plaza East Brooklyn, NY 11201

Brian L. Nix: 67 Cady Street Rochester NY 14608

STATE OF NEW YORK, COUNTY OF KINGS, ss.:

Ana Alberto, being duly sworn deposes and says; that deponent is not a party to the action is over 18 years of age and resides in the State of New York

that on the 27 day of January 2020 deponent served the within Notice of Inquest on UNITED STATES POSTAL SERVICE and BRIAN L. NIX.

for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within New York State.

I have sworn to before me, this 27 day of January 2020

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Esther Cavaretta
Notary Public, State of New York
No. 01CA6073635
Qualified in Queens County
Commission Expires 4/22/22

Ana Alberto

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OLUSHOLA R. JETAWO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE, BRIAN L.
NIX, and UNITED STATES OF AMERICA,

Defendants.

Civil Action No.
CV-20-

(_____, J.)
(_____, M.J.)

**CERTIFICATION OF SCOPE OF EMPLOYMENT AND
NOTICE OF SUBSTITUTION OF UNITED STATES OF AMERICA
AS PARTY DEFENDANT FOR BRIAN L. NIX**

By virtue of the authority vested in this Office by the Attorney General of the United States of America under 28 C.F.R. § 15.4, it is hereby certified, on the basis of the information now available with respect to the incident alleged in the Small Claims Court Action, that defendant BRIAN L. NIX was acting within the scope of his employment as a deemed employee of UNITED STATES OF AMERICA for purposes of the Federal Tort Claims Act at the time of the incident out of which the claims alleged in the Complaint arose.

Accordingly, the UNITED STATES OF AMERICA is hereby substituted by operation of law as the party defendant pursuant to 28 U.S.C. § 2679(d)(2) for defendant BRIAN L. NIX, and any and all claims asserted in the Civil Court of the City of New York, County of Kings against defendant BRIAN L. NIX shall be, and hereby are, deemed to be claims for relief against the UNITED STATES OF AMERICA.

Dated: August 17, 2020
Brooklyn, New York

Respectfully submitted,

SETH D. DUCHARME
Acting United States Attorney
Eastern District of New York
Attorney for the United States of America
271-A Cadman Plaza East
Brooklyn, New York 11201

By: /s/ Ekta R. Dharia

EKTA R. DHARIA
Assistant United States Attorney
(718) 254-7520
ekta.dharia@usdoj.gov

cc: **By E-Mail**
Clerk of the Court
Civil Court of the City of New York
County of Kings
141 Livingston Street
Brooklyn, New York 11201
kingscivil141@nycourts.gov

By E-Mail
Mr. Rory Mulholland
Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP
1 Metrotech Center, Suite 1701
Brooklyn, New York 11201
rmulholland@abramslaw.com
Attorney for Plaintiff

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OLUSHOLA R. JETAWO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE, BRIAN L.
NIX, and UNITED STATES OF AMERICA,

Defendants.

Civil Action No.
CV-20-

(_____, J.)
(_____, M.J.)

The Court having been fully apprised that the Attorney General's designee has certified that the individual defendant, Brian L. Nix, was acting within the scope of his employment at the time of the incident giving rise to this suit, and the Court having been apprised of the substitution of the United States pursuant to 28 U.S.C. § 2679(d)(2), it is hereby ORDERED that the state law claims set forth in the complaint are dismissed with respect to the individual defendants Brian L. Nix and the United States Postal Service, on the ground that the exclusive remedy for these claims is an action against the United States and because the United States has been substituted as the sole defendant on those claims.

It is further ORDERED that the caption of this action shall be amended as follows:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OLUSHOLA R. JETAWO,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No.
CV-20- 3740

(_____, J.)

(_____, M.J.)

DATED this _____ day of _____, 2020

UNITED STATES DISTRICT JUDGE